W. P. (S) No. 3206 of 2006

In the matter of an application under Article 226 of the Constitution of India

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Janki Bhuiyan … … Petitioner

Versus

1.The State of Jharkhand
2.Jail Superintendent, Daltonganj, Palamau
3.District Provident Fund Officer, Daltonganj, Palamau
4.Accountant General, Jharkhand, Ranchi... … Respondents

For the Petitioner : M/s. M. M. Pan, Senior Advocate &
Anand Kumar Sinha, Advocate
For the Respondents : Mr. Saket Upadhyay, J.C. to AAG

Present
HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR

By Court: The present petitioner has approached this Court seeking a direction upon the respondents to grant retiral benefits to his grand mother namely, Late Rukmini Devi. After the death of Rukmini Devi, his son Bifan Bhuiyan had filed this writ petition and after his death, a petition for substitution was filed and by order dated 13.11.2006 it was allowed. The present petitioner is substituted in place of the original petitioner.

2. Heard learned counsel for the parties and perused the documents on record.

3. The original petitioner's mother was appointed in the year, 1981 as Lady Warden in Daltonganj Jail. She superannuated from service w.e.f. 30.06.2000.

4. A counter affidavit has been filed stating as under:

> *4. "That it is stated and submitted that Late Rukmani Devi was engaged as a temporary female warder since 19.01.1974 to 28.09.1991 in Sub Jail, Latehar on daily wages basis and accordingly she was paid her remuneration. It is further stated and submitted that she worked there time to time according to the requirement of the aforesaid jail. Thereafter she was engaged in District Jail, Daltonganj from October, 1991 on temporary basis as a female warder for which also she was paid on*

the daily wages basis.

5. That it is stated and submitted that in compliance with the order of the Hon'ble Patna High Court, Home (Jail) Department of Bihar created 156 posts of permanent female warder in pay scale of 950-1400 in different Jails of the State of Bihar vide letter no. 3775 dated 21.8.1997 to absorb those persons those who were working on temporary female warder.

8. That is is stated and submitted that as per Jail manual Rule 632, the Superintendent of Central Jail is appointing authority of Warders and Female warders under his circle. It is further stated that from 13.9.1997 Rukmani Devi was given salary in the pay scale of Rs. 950-1500/- and later on it was revised in the pay scale of Rs. 3050-4590/-. Finally she retired on 30.06.2000 in the same pay scale after getting two increments. She got her retirement on 30.06.2000 on the basis of school leaving certificate provided by her. Hence she worked as regular female warder from 13.09.1997 to 30.06.2000 i.e. 2 years 9 months 18 days only which is not admissible for pension benefit as per Bihar Pension Rule No. 134 (B) under the head pensionary benefits.

9. That is is stated and submitted that after her retirement she was paid Rs. 11,469/- against group insurance and Rs. 39,138/- against G.P.F. by the then Superintendent, District Jail, Daltonganj as would be evident from bill passed by the authority concerned.

10. That with reference to the statement made in paragraph 1 and prayer portion of the writ application under reply it is stated that in view of the facts stated hereinbefore, the petitioner is not entitled for any relief as prayed for therein. It is further stated that the Female Warder Late Rukmani Devi was appointed as regular female warder on 13.09.1997 by the order of the then Superintendent, Central Jail Gaya. She was posted in District Jail, Daltonganj and she retired on 30.06.2000. Her duty period as a regular female warder was only of 2 year 9 months and 18 days, which is not admissible for pensionary benefits as per Bihar Pension Rule No. 44 and 145. Although she was paid 11,469/- against Group Insurance and Rs. 39,138/- against G.P.F. (Annexure-F hereto) at the time of retirement, Gratuity and leave payment were not paid. It is further stated that these payments have already been drawn from the Treasure i.e. Rs. 6,182/- and

Rs. 6,771/- respectively and it will be paid to be lawful claimant of Late Female Warder Rukmani Devi for which is has been communicated to the petitioner. Superintendent, District Jail, Daltonganj has informed vide letter no. 79 dated 15.01.2007 that the petitioner's son Shri Janki Bhuiyan came with the succession certificate but declined to receive the above cited drawn money."

5. A reply to the counter affidavit and a supplementary affidavit have also been filed by the petitioner.

6. A perusal of the writ petition would disclose that in paragraph no. 6, the petitioner has made the following statement:

6. "That it is further stated that though the petitioner's mother Rukmini Devi was appointed against Temporary Additional Lady Warden but later on vide letter no. 1164 dated 16.09.1997 of the Jail Superintendent, Daltonganj, the services of the petitioner's mother alongwith other has been confirmed and adjusted against the permanent post."

7. The document dated 16.09.1997 also discloses that the said late Rukmini Devi was appointed on temporary basis as extra Lady Warden.

8. Mr. Anand Kumar Sinha, learned counsel appearing for the petitioner submits that since a letter was written on 11.03.1999 by the Superintendent of District Jail, Daltonganj for the service book of the said late Rukmini Devi, it would go to indicate that the said late Rukmini Devi was in regular service. He has further submitted that pursuant to a query raised by this Court, an application under RTI seeking information regarding salary paid to the said late Rukmini Devi has been made however, no reply has yet been received.

9. As against the above, Mr. Saket Upadhyay, learned J.C. to AAG appearing for the respondents reiterated the stand taken in the counter affidavit and submitted that, the said late Rukmini Devi was not working as a regular Female Warder, rather she worked only for 2 years, 9 months and 18 days as regular Female Warder. Since, she did not complete the minimum period of service, which

is 10 years, for grant of pension, the claim made in the present writ petition cannot be allowed.

10. Rule 134 (B) of the Jharkhand Pension Rules is extracted below:

> ***134 (B) "Pensionary benefits.***
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> *(i) A permanent Government servant on absorption in Public Under-taking will be eligible for a pro-rata pension and Death-cum-retirement Gratuity based on the length of his qualifying service under Govt. till the date of absorption. The pension will be calculated on the basis of average emoluments for one year preceding the date of absorption and the death-cum-Retirement Gratuity based on the length of his qualifying service under Govt. till the date of absorption. The pension will be calculated on the basis of average emoluments for one year preceding the date of absorption and the Death-cum-Retirement Gratuity on the basis of the emoluments drawn immediately before absorption.*
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> *In case where a Government servant at time of absorption, has less than 10 years service and is not entitled to pension, the question of proportionate pension will not arise; he is only eligible to proportionate service gratuity in lieu of pension and to Death-cum-Retirement Gratuity based on length of service.*
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> *(ii) The amount of pension/gratuity and Death-cum-Retirement gratuity will be worked out on the basis of rules inforce at the time of permanent absorption of the Government servant concerned and he will be given his pension/gratuity Death-cum-retirement Gratuity immediately on absorption in the Public Undertaking. Such a Government servant will, however, be required to give an undertaking that in the event of his service with the Public Undertaking terminating at the instance either of the employer or of the employee within a period of two years from the date of his retirement from Government service and permanent absorption in the Public Undertaking the approval of the State Government shall be obtained by him before he takes up any private employment.*
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> *(iii) Whatever pensionary benefits earned by a Government servant prior to his absorption will be allowed to him in addition to the pay he would get under the Public Undertaking."*
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> .....
> .....

11. A perusal of the documents on record clearly indicates that the said late Rukmini Devi was employed on temporary basis as Female Warder as and when her service was required. In the appointment letter of the late Rukmini Devi dated 16.09.1997, the word 'temporary' as well as 'extra' is appearing and therefore, there cannot be any doubt that she was not regularly working.

12. The learned counsel appearing for the petitioner would next contend that even if it is assumed that the said late Rukmini Devi was initially appointed on a temporary basis and continued to work in such capacity, she would be entitled for grant of benefit of pension. I am not in agreement with the contention raised on behalf of the learned counsel for the petitioner for the simple reason that neither the appointment letter nor any document filed in the present proceeding would indicate that the said late Rukmini Devi was appointed on a sanctioned vacant post and she worked continuously on temporary basis. The letter dated 16.09.1997 would go to indicate that she was employed as extra Female Warder on temporary basis and merely because a letter was written by the Superintendent, District Jail, Daltonganj asking for service book would not indicate that the said late Rukmini Devi was employed on permanent basis. The letter written by the Superintendent, District Jail, Daltonganj was possibly in the context of the fact that the said late Rukmini Devi had worked for more than two years on regular basis when she was finally absorbed in service.

13. In view of the aforesaid, I find no merit in this writ petition which is accordingly dismissed.

(Shree Chandrashekhar, J.)

Jharkhand High Court at Ranchi
The 22nd day of November, 2013
R.Shekhar/NAFR/Cp.2